

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 735**

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**Introduced by Senator Wolk  
(Coauthor: Senator DeSaulnier)**

February 22, 2013

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An act to ~~amend~~ *add* Section ~~85057.5~~ of 85351 to the Water Code, relating to the Sacramento-San Joaquin Delta Reform Act of 2009.

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Wolk. Sacramento-San Joaquin Delta Reform Act of ~~2009~~: ~~covered actions~~. 2009: *multispecies conservation plans*.

The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta by January 1, 2012. ~~The act requires a state or local public agency that proposes to undertake a covered action to prepare a written certification, as prescribed, as to whether the covered action is consistent with the Delta Plan. The act defines "covered action" to mean a plan, program, or project that meets specified conditions.~~

~~This bill would exclude from the definition of "covered action" the approval or implementation of a conservation plan and implementing agreements submitted, by specified entities, pursuant to the federal Endangered Species Act, the Natural Community Conservation Planning Act, or certain provisions related to the taking, importation, exportation, or sale of endangered or threatened species, or the implementation of conservation measures included in a conservation plan approved, by specified entities, pursuant to these provisions.~~

*This bill would require the council, the Department of Fish and Wildlife, the Counties of Contra Costa, Sacramento, and Solano, the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency, and the San Joaquin Council of Governments to enter into a memorandum of understanding regarding multispecies conservation plans, as defined, that describes, among other things, how the parties would ensure that multispecies conservation plans that have been adopted or are under development are consistent with the Delta Plan. By imposing this requirement on local public agencies, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 85351 is added to the Water Code, to  
2     read:  
3     85351. (a) The council, the Department of Fish and Wildlife,  
4     the Counties of Contra Costa, Sacramento, and Solano, the Yolo  
5     County Habitat/Natural Community Conservation Plan Joint  
6     Powers Agency, and the San Joaquin Council of Governments  
7     shall, by January 1, 2015, enter into a mutually agreeable  
8     memorandum of understanding, or other written agreement, as  
9     appropriate, that describes the following:  
10    (1) How the parties would ensure that adopted multispecies  
11    conservation plans are consistent with the Delta Plan, and the  
12    Delta Plan is consistent with those multispecies conservation plans.  
13    (2) How the parties would ensure that multispecies conservation  
14    plans under development are consistent with the adopted  
15    multispecies conservation plans, the Delta Plan, and each other.

1     (3) *How to ensure that all the current multispecies conservation*  
2 *plans, future multispecies conservation plans, and the Delta Plan*  
3 *are implemented in accord with each other.*

4     (b) *The council shall invite and encourage the United States*  
5 *Fish and Wildlife Service to participate in developing and signing*  
6 *the agreement pursuant to this section, to the extent authorized*  
7 *under federal law.*

8     (c) *For purposes of this section, “multispecies conservation*  
9 *plan” means a multispecies conservation plan adopted under*  
10 *Section 1539 of the federal Endangered Species Act (16 U.S.C.*  
11 *Sec. 1531 et seq.), the Natural Community Conservation Planning*  
12 *Act (Chapter 10 (commencing with Section 2800) of Division 3 of*  
13 *the Fish and Game Code), or jointly under both acts.*

14     SEC. 2. *If the Commission on State Mandates determines that*  
15 *this act contains costs mandated by the state, reimbursement to*  
16 *local agencies and school districts for those costs shall be made*  
17 *pursuant to Part 7 (commencing with Section 17500) of Division*  
18 *4 of Title 2 of the Government Code.*

19     SECTION 1. ~~Section 85057.5 of the Water Code is amended~~  
20 ~~to read:~~

21     ~~85057.5. (a) “Covered action” means a plan, program, or~~  
22 ~~project as defined pursuant to Section 21065 of the Public~~  
23 ~~Resources Code that meets all of the following conditions:~~

24     ~~(1) Will occur, in whole or in part, within the boundaries of the~~  
25 ~~Delta or Suisun Marsh.~~

26     ~~(2) Will be carried out, approved, or funded by the state or a~~  
27 ~~local public agency.~~

28     ~~(3) Is covered by one or more provisions of the Delta Plan.~~

29     ~~(4) Will have a significant impact on achievement of one or~~  
30 ~~both of the coequal goals or the implementation of~~  
31 ~~government-sponsored flood control programs to reduce risks to~~  
32 ~~people, property, and state interests in the Delta.~~

33     ~~(b) “Covered action” does not include any of the following:~~

34     ~~(1) A regulatory action of a state agency.~~

35     ~~(2) Routine maintenance and operation of the State Water~~  
36 ~~Project or the federal Central Valley Project.~~

37     ~~(3) Regional transportation plans prepared pursuant to Section~~  
38 ~~65080 of the Government Code.~~

39     ~~(4) A plan, program, project, or activity within the secondary~~  
40 ~~zone of the Delta that the applicable metropolitan planning~~

organization pursuant to Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) A plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) A project within the secondary zone, as defined pursuant to Section 29731 of the Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) A project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) A project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

1 ~~(ii) A project that is within the alignment of a conveyance~~  
2 ~~facility as shown in Figures 1 to 5, inclusive, of the Final Draft~~  
3 ~~Initial Assessment of Dual Delta Water Conveyance Report, April~~  
4 ~~23, 2008, and in future revisions of this document by the~~  
5 ~~department.~~

6 ~~(8) Leases approved by a special district if all of the following~~  
7 ~~apply:~~

8 ~~(A) The uses proposed by the lease are authorized by the~~  
9 ~~applicable general plan and zoning ordinances of the city where~~  
10 ~~the special district is located.~~

11 ~~(B) The uses proposed by the lease are approved by the city~~  
12 ~~where the special district is located and the city complies with~~  
13 ~~Chapter 3 (commencing with Section 85225) of Part 3, if~~  
14 ~~applicable, prior to approval of the lease by the special district.~~

15 ~~(C) The special district complies with the California~~  
16 ~~Environmental Quality Act (Division 13 (commencing with Section~~  
17 ~~21000) of the Public Resources Code) prior to approving the lease.~~

18 ~~(9) (A) Routine dredging activities that are necessary for~~  
19 ~~maintenance of facilities operated by a special district.~~

20 ~~(B) For purposes of this paragraph, "routine dredging activities"~~  
21 ~~are limited to the following:~~

22 ~~(i) Dredging to maintain the Stockton Deep Water Ship Channel~~  
23 ~~at a depth of 40 feet in the sediment trap at the confluence of the~~  
24 ~~San Joaquin River, between river mile 39.3 to river mile 40.2, and~~  
25 ~~to maintain the remaining Stockton Deep Water Ship Channel at~~  
26 ~~a depth of 35 feet plus 2 feet overdredge from river mile 35 to river~~  
27 ~~mile 43.~~

28 ~~(ii) Dredging designed to maintain the Sacramento Deep Water~~  
29 ~~Ship Channel at a depth of 30 feet plus 2 feet of overdredge from~~  
30 ~~river mile 0.0 to river mile 30, and at a depth of 35 feet from river~~  
31 ~~mile 35 to river mile 43.~~

32 ~~(C) Except as provided by this subdivision, it is the intent of~~  
33 ~~the Legislature that this exemption shall not be interpreted or~~  
34 ~~treated as changing or modifying current substantive and procedural~~  
35 ~~regulations applicable to the decision to approve dredging~~  
36 ~~operations.~~

37 ~~(10) The approval of a conservation plan and implementing~~  
38 ~~agreements submitted by a city, county, special district, or joint~~  
39 ~~powers authority consisting of cities or counties, or both, within~~

1 the Counties of Contra Costa, Sacramento, San Joaquin, Solano,  
2 or Yolo pursuant to any of the following:

3 (A) Section 1539 of the federal Endangered Species Act (16  
4 U.S.C. Sec. 1531 et seq.);

5 (B) The Natural Community Conservation Planning Act  
6 (Chapter 10 (commencing with Section 2800) of Division 3 of the  
7 Fish and Game Code);

8 (C) Section 2081 of the Fish and Game Code for a conservation  
9 plan and implementing agreements that are also incorporated in a  
10 conservation plan pursuant to Section 1539 of the federal  
11 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.);

12 (11) The implementation of conservation measures included in  
13 a conservation plan approved by a city, county, special district, or  
14 joint powers authority consisting of cities or counties, or both,  
15 within the Counties of Contra Costa, Sacramento, San Joaquin,  
16 Solano, or Yolo pursuant to any of the following:

17 (A) Section 1539 of the federal Endangered Species Act (16  
18 U.S.C. Sec. 1531 et seq.);

19 (B) The Natural Community Conservation Planning Act  
20 (Chapter 10 (commencing with Section 2800) of Division 3 of the  
21 Fish and Game Code);

22 (C) Section 2081 of the Fish and Game Code for a conservation  
23 plan and implementing agreements that are also incorporated in a  
24 conservation plan pursuant to Section 1539 of the federal  
25 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.);

26 (e) For purposes of paragraphs (8) and (9) of subdivision (b),  
27 “special district” means the Port of Stockton or the Port of West  
28 Sacramento;

29 (d) This section shall not be interpreted to authorize the  
30 abrogation of a vested right whether created by statute or by  
31 common law.